



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,801	08/31/2001	Kunihiko Kido	566.40564X00	8434

24956 7590 03/30/2007
 MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
 1800 DIAGONAL ROAD
 SUITE 370
 ALEXANDRIA, VA 22314

EXAMINER

VIG, NARESH

ART UNIT	PAPER NUMBER
----------	--------------

3629

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
30 DAYS	03/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

DETAILED ACTION

This is in reference to response received 06 July 2006. Claims 40 and 42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 06 July 2006. Claims 32-39, 41 and 43 are pending for examination. Upon review of the amended claims and newly added claims 42 - 44 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

In the amendment received 21 March 2006, applicant has cancelled all previously pending claims 1-31 and added new claims 32-43, of which applicant elected without traverse claims 32-39, 41 and 43. Upon review of pending claims examiner has determined that the pending claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Newly submitted pending claims are non elected claims in the response received 08 September 2005 in which applicant had elected claims 1-18 without traverse. An office action was mailed to the applicant on then pending elected claims 1-18 on 21 November 2005.

Therefore the newly submitted pending claims are distinct and divergent from the earlier claimed inventions and would require a new, divergent and different search. Such change in the inventions amount to a " Shift claiming another invention after an

Art Unit: 3629

action given on the claimed subject matter and are therefore subject to " Election by Original Presentation" as analyzed above.

Kindly refer to the following MPEP excerpts for guidelines:

819 Office Generally Does Not Permit Shift:

The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter. **Note that the applicant cannot, as a matter of right, file a request for continued examination (RCE) to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (i.e., applicant cannot switch inventions by way of an RCE as a matter of right).** When claims are presented which the examiner holds are drawn to an invention other than the one elected, he or she should treat the claims as outlined in **MPEP § 821.03**.

Where the inventions are distinct and of such a nature that the Office compels restriction, an election is not waived even though the examiner gives action upon the patentability of the claims to the nonelected invention. Ex p an e Loewenbach, 1904 C.D. 170, 110 O.G. 857 (Comm'r Pat. 1904) and In re Waugh, 135 F.2d 627, 57 USPQ 371 (CCPA 1943).

821.03 Claims for Different Invention Added After an Office Action

Claims added by amendment following action by the examiner, **MPEP § 818.01, § 818.02(a)**, to an invention other than previously claimed, should be treated as indicated by **37 CFR 1.145**.

37 CFR 1.145 Subsequent presentation of claims for different invention.

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ **1.143 and 1.144**

Therefore, newly submitted claims are directed to an invention that is independent or distinct from the invention originally claimed for the reasons given above.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, pending claims are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment presenting only claims drawn to a nonelected invention is non-responsive (MPEP § 821.03). The currently newly added pending claims are not readable on the elected invention because they are subject to "Election by Original Presentation". as analyzed above.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.**

Conclusion

Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

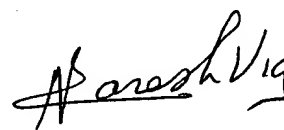
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naresh Vig whose telephone number is (571) 272-6810. The examiner can normally be reached on M-F 7:30 - 6:00 (Wednesday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3629

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Naresh Vig", with a stylized flourish at the end.

Naresh Vig
Examiner
Art Unit 3629

March 29, 2007